

Con. body
(25-1)

STATEMENT OF SENATOR STROM THURMOND (D-SC) ON SENATE FLOOR ON
JANUARY 8, 1959.

Mr. President:

I cannot help but feel that the Senate itself, as an institution, is at this moment under attack and in peril of destruction. As is so often the case, the most imminent danger to this, as to many other institutions, lies from within rather than from without. Surely the proponents of the pending motion do not envisage the depth and breadth of their proposal.

Tradition, in and of itself, is no complete answer to any problem. Nevertheless, long-standing traditions are seldom maintained without sufficient reason. Almost invariably, traditions serve as a warning beacon of obscure, but sound and logical, purposes. A beacon of more than 170 years unbroken tradition stands as a warning of the seriousness of the proposal before this body. Should the motion to proceed to a consideration of the rules be favorably considered by this body, this 170-year tradition will be destroyed, and regardless of a subsequent return to the same method of procedure by this body after sober reflection, the tradition will be broken, and the beacon extinguished forever.

Even more vital, however, are the logical purposes which prompted the unshattered existence of this tradition. Foremost among these purposes is that of insuring an orderly procedure, so vital in such an authoritative body.

Complaints have been made that this body is not only deliberative, but on occasions, dilatory, when operating under its present rules. Yet some of those who voice these complaints would have this body declare itself, by an affirmative vote to proceed to the adoption of rules, to be a non-continuing body and, therefore, without any rules whatsoever. It has been suggested that during the interim between this vote and the adoption of new rules by a majority vote of this body, that the Senate proceed under "general parliamentary law" or, as one self-styled authority suggested, under Robert's Rules of Order. I cannot conceive of a more perfect example of jumping from the frying pan into the fire than to proceed from a disagreement as to what the rules should be, to a disagreement on what the rules are, as would be the case if this

body attempted to operate under "general parliamentary law", or even Robert's Rules of Order.

The Senate is not an ordinary parliamentary body. Analogies to the procedure of other parliamentary bodies have little, if any, relevancy to the question before us. For instance, the House of Representatives is exclusively a legislative body. The Senate is far more. In addition to being a legislative body, it performs, by constitutional mandate, both executive and judicial functions. Article II, Section 2 of the Constitution provides that the President shall share with the Senate his executive treaty-making power and his power of appointment of the officers of the United States. Article I, Section 3 of the Constitution requires of the Senate a judicial function by reposing in the Senate the sole power to try all impeachments.

The uniqueness of the Senate is not confined, by any means, to its variety of functions. There are innumerable other aspects about this body which prevent its orderly operation at any time under parliamentary law other than its own rules, adopted in accordance with the provisions of those rules. For example, almost all parliamentary procedures presuppose that any main question, after due notice, can be decided by at least a majority of the members of the particular body using the parliamentary procedure. Any Senate rules which presupposed such a conclusion would be inoperable, for the Constitution itself specifies the necessity for two-thirds majority for action on many matters. Among these issues requiring a two-thirds majority by constitutional mandate are for conviction on impeachment; to expel a member; to override a presidential veto; to concur in a treaty; to call a constitutional convention; to propose a constitutional amendment to the States and to constitute a quorum when the Senate is choosing a Vice-President. The very fact that each State, regardless of its population, has equal representation in this body belies the thought of simple majority rule in its deliberation.

It is this very uniqueness which has compelled so many to conclude that the Senate had a degree of continuity unknown to other parliamentary bodies.

The Founding Fathers themselves, in drafting the Constitution, provided for this continuity by establishing a six-year term of office for each Senator, so that a minimum of two-thirds of the entire body would continue from one session to the next. Had the Founding Fathers desired continuity only, but less than a continuing body, they could have provided for a staggered term of four years for a Senator with one-half of the Senate returning from one session to the next. This would not have provided the necessary quorums to do business at all times, and the Senate would not have been a continuing body.

The Senate itself has re-enforced the premise that it is a continuing body by the unbroken precedent of continuing its rules from one session to the next. In recent years there are two clear-cut precedents upholding the Senate's status as a continuing body, and even more specifically, that its rules continue from one session to the next. In 1953 and again in 1957, this body tabled a motion that it proceed to take up the adoption of rules for the Senate.

In 1954, the Senate voted to condemn the late Senator McCarthy for his conduct in a previous session. The committee report accompanying the resolution stated: "The fact that the Senate is a continuing body should require little discussion. This has been uniformly recognized by history, precedent and authority."

In addition, the Senate has jealously maintained its authority to continue its committees in their operations between adjournment and the commencement of the next ensuing session. The Supreme Court in the 1926 case of McGrain v. Daugherty specifically ruled that the Senate was a continuing body and, therefore, its committees were authorized to act during the recess after the expiration of a Congress.

Is the purpose sought to be accomplished by the drastic action proposed so worthy as to justify the risk of stripping the Senate's committees of their authority to function after the date of adjournment? Is it so imperative that it justifies the abandonment of orderly procedure for the jungle of "general parliamentary law"?

The proponents of the pending motion aver that the real target of this all-out effort is one, and only one, Senate rule--

the one which primarily governs the limitation of debate. This much maligned rule has been made the scapegoat by many groups. Its greatest distinction, however, appears to be its seclusion from objective consideration.

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In the interest of objectivity, let us compare ~~this~~ rule²² with Rule 29, The Previous Question, of the suddenly popular Reuther's "Robert's Rules of Order".

Rule XXII requires a two-thirds vote of the membership to end debate on any particular measure, except the rules themselves. A parliamentary body acting under "Robert's Rules of Order" can end debate and force a vote on the pending question by passing a motion of the previous question by a two-thirds majority of those present and voting. Even under "Robert's Rules of Order", a majority vote, even with notice, cannot end debate.

The difference, in practical effect, is not overly large. For example, had the limitation of debate in the Senate always been governed by "The Previous Question" in the present "Robert's Rules of Order", no result on previous efforts to invoke cloture would have been different from the result under the rules as they have existed. Had the present Rule XXII of the Senate always controlled the limitation of debate, only in one instance would the result on cloture attempts have been changed. The particular instance to which I refer was a cloture vote which prevailed in 1927 under a rule requiring ~~a majority of~~ two-thirds of those present and voting to end debate.

The distinction between Rule XXII and "The Previous Question", though slight in practical effect, is not without a strong basis in reason. "Robert's Rules of Order" was designed for the general use of societies, which, not being governmental bodies, have no authority to compel attendance of delegates. "Robert's Rules", therefore, recognize the impracticality of making the actions of those bodies for whom his rules were designed contingent on membership. Robert used the most practical basis for his purposes for protecting the rights of minorities in societies generally.

The United States Senate, to understate the matter, occupies a greatly different position than the general societies for which

"Robert's Rules" was designed. Its membership is under oath to support the Constitution and to well and faithfully discharge the duties of their offices. Surely a presumption by the rules of regular attendance is not unduly harsh. If it be too harsh, why has there been no attack on the provision of Rule V which authorizes the Sergeant-at-Arms to compel the attendance of absent Senators.

As far as limitation of debate is concerned, the only distinction between Rule XXII of the Senate/and the rules designed for Podunk's local Liar's Club/is the pre-supposition by the Senate rules of regular attendance of its members. Is this distinction too great for what has been called the greatest deliberative body on earth?

Consider what the Senate is being asked to risk in an effort to erase this distinction, possibly in favor of a greater distinction in the other direction. The proponents of the pending motion/would have the Senate declare itself without rules. My research having failed to find the "general parliamentary law" codified, I presume the Senate would next have to determine temporary rules/under which to proceed to adopt permanent rules. As I have indicated, Mr. Reuther has recommended "Robert's Rules of Order". It is quite possible, even probable, that a majority of Senators would prefer even temporary rules other than Robert's. There are numerous others, such as Parliamentary Procedure, by Rose Marie Crugan; Handbook of Parliamentary Procedure, by Henry A. Davidson; Lex Parliamentaria Americana, by Luther Stearns Cushing; Manual of Parliamentary Practice, by Luther Stearns Cushing; Rules of Proceeding and Debate in Deliberative Assemblies, by Luther Stearns Cushing; Precedents of Proceedings in the House of Commons, by John Hatsell; A Manual of Parliamentary Practice, by Thomas Jefferson; Manual of Legislative Procedure, by Paul Mason. It is even conceivable/that no one of these or other complete set of rules/would be acceptable to a majority. Can anyone anticipate the confusion which might result/from opening such a Pandora's box? The Senate could easily spend several months/debating and deciding on temporary rules. After that would come the more difficult and more time consuming task/of debating and agreeing on each section

of each of the permanent rules. It would be slow work under the order provided by our existing rules, but in the jungle in which we are urged to jump, it would be almost impossible.

In the meantime, it behooves us to remember that the existence of every committee of the Senate/stems from the Senate rules, and, therefore, the committees of the Senate would pass with the rules. During the succeeding indeterminate period/until new permanent rules were adopted, our committees would not be working. Legislative business would be at a standstill. The emergencies of the country, both domestic and foreign, would have to run their course/while we of the Senate wrangled/in an attempt to extricate ourselves/for the self-made jungle of "general parliamentary confusion". Heaven forbid/that we place ourselves/in such a position.

Nor would that/be the end. Should we so abandon order for confusion, a precedent would be set for future Congresses, many of which would then want to assert their independence/and draft their own rules. Each group could flex its muscles/and determine its gain or loss of strength among new members. It is conceivable to me/that eventually/the first year of each session would have to be set aside for the Senate to make its rules/under which to act on substantive matters during the second year of the session. It may be said that this is the wildest sort of speculation--and it is. That is just the point. We are asked to sacrifice the traditionally orderly procedure of the Senate/for something as to the nature of which we can only speculate, and I might add, the only guide that is offered to limit our speculation/is our individual imagination.

I sincerely hope and trust that the Senate/^{not}has/degenerated to the point/at which it will, at one grand sweep, shatter the cornerstone of its existence. It deserves a better fate/than strangulation/in a parliamentary jungle of its own making.